

# Wills

A Will is a legal document that controls the disposition of your estate at death and may provide for guardianship for your minor children after your death. A will has no effect until death.

## **Q. What is my estate?**

A. Your estate consists of all of your property and personal belongings you own or are entitled to possess at the time of your death. It includes real and personal property, cash, savings and checking accounts, stocks, bonds, real estate, automobiles, etc. Your estate also includes any debts you owe at the time of your death.

## **Q. May I dispose of my estate in any way?**

A. Generally, you are free to give your property to whomever you desire. Most states, however, prevent you from completely disinherit a spouse. In those states your spouse will receive 1/3 to 1/2 of your estate, regardless of what you state in your will. Some states, such as Louisiana, also provide shares of the estate to your children. Insurance proceeds and jointly owned property may be controlled by other provisions of the law. Any debts you owe will also be paid by your estate before it is distributed to the beneficiaries. Please talk to a legal assistance attorney for details on the law in effect in your state.

## **Q. Who are the beneficiaries of my estate?**

A. A person who receives property through a will is a "Beneficiary." You may leave all of your property to one beneficiary, or you may divide your estate among several persons. You may designate in your will that specific items of property or sums of money go to certain persons. You can think of beneficiaries in two levels: "primary beneficiaries"- those who inherit your property upon your death; and "secondary beneficiaries"- those who inherit your property in the event a "primary beneficiary" dies before you.

## **Q. May I name my children as beneficiaries?**

A. You should name the person(s) you want to receive your estate by name in your will. It is unwise to name a parent or guardian as beneficiary and "hope" that they will give the money to your children. If you do not specify otherwise and your children are still minors when you die, then their guardian will take care of the property for the children until the children reach the age of majority, which is 18 in most states. By creating a trust in your will it is possible to require that your children be older before receiving their inheritance.



**Q. What is an executor?**

A. An executor (executrix, if female) or personal representative is the person who will manage and settle your estate according to the will. You should consider naming a substitute executor in case the named executor is unable or unwilling to serve.

**Q. Should I name a guardian for my children in my will?**

A. Yes. Usually the surviving spouse becomes the sole guardian of any minor children. You should also name a substitute guardian. This would provide for a guardian for your children in the event that your spouse does not survive you. While this substitute guardian need not be the same person in both your will and your spouse's will, by naming the same person you will avoid the situation where the court must choose between two named guardians.

**Q. Is my legal residence important to my will?**

A. Yes. Your legal residence affects where your will is probated and the amount of state inheritance or estate tax that may be paid at death. For more information about legal residence, please see the Northern Law Center-SHAPE fact sheet entitled "State of Legal Residence."

**Q. Once I have a will, can I change it later?**

A. Yes. Changes to a will are made by drafting a new will or by adding a "Codicil." A Codicil is a legal document that amends your will. **NEVER MAKE CHANGES ON THE ORIGINAL COPY OF YOUR WILL** – changes on the face of your original will may make it invalid.

**Q. How Long Is a Will Good?**

A. A properly drawn and executed will remains valid until it is changed or revoked. You should, however, review your will regularly and after significant life events. Changes such as marriage/divorce, birth of children, tax laws, or even a change in the nature or value of your estate, can affect the effectiveness of your will and whether your property will still pass in the manner you wish.

**Q. Do I really need a will?**

A. If you die intestate (i.e., without a will) your property is distributed according to state law. In most circumstances, this means it will go to your spouse or children. Even if this is the outcome you want, making a will helps to insure it will pass that way. Moreover, the existence of a will often reduces the time and expense it takes to administer an estate.

For parents with minor children, more importantly, a will provides a place to nominate guardians for those children. Grandparents, aunts, uncles, and other family members do not automatically receive custody of minor children after the deaths of the parents. Your will should specify the individual, as well as an alternate, you would like to nominate as the guardian of your children.

**Q. What happens to jointly held property?**

A. Bank accounts, real property, and other property held jointly by two or more people usually pass to the survivor by law and not by the terms of the decedent's will. Remember, however, that there are many cases in which it is not to your advantage to hold property in this manner.



**Q. Does a will control who gets my SGLI or life insurance?**

A. Although the proceeds of insurance policies may be considered part of your estate, a will does not change the designated beneficiaries of an insurance policy. The proceeds of an insurance policy will normally pass to the primary or secondary beneficiary designated on the face of the respective policy.

**Q. What about a living trust or revocable trust?**

A. A living trust is a legal arrangement that can be used in addition to a will to pass property at death. While the Northern Law Center-SHAPE cannot prepare a living trust for you, a legal assistance attorney can talk with you about the advantages and disadvantages of a living trust.

***Remember, each case is different. This summary gives you general information only and is not a substitute for legal advice. You may make an appointment with the Northern Law Center-SHAPE to discuss the particulars of your situation or to answer any questions you may have.***

**Wills** is distributed by the Northern Law Center-SHAPE, Legal Assistance Office, located in Building 318. Our office hours are: 09:00 to 17:00 M-F. You may call us for an appointment at 423-4868. Please visit our web site at <http://www.usagbenelux.eur.army.mil/sites/installation/legal.asp> for more information on this or other legal topics.